

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZAY SHUMLICH, an individual,

Plaintiff,

v.

U.S. BANK, N.A.,

Defendant.

CASE NO. 2:24-cv-01681-MJP

ORDER ON STIPULATED
PROTECTIVE ORDER

This matter comes before the Court on the Parties' Stipulated Motion for Protective Order. (Dkt. No. 20). Having reviewed the motion and all supporting materials, the Court GRANTS IN PART the Motion.

The Court takes no issue with the majority of the proposed protective order, which adheres to the district's model. See LCR 26(c)(2) ("Parties are encouraged to use this district's model protective order, available on the court's website."). However, in Section 2 of the proposed order, the Parties have stipulated to designate as confidential "[i]nformation expressly designated as, and reasonably believed by the designating party to be, confidential in nature."

1 (Mot. at 2.) The Court declines to adopt this language as it would undermine the requirement that
2 materials intended to be designated as confidential be specifically defined. The Court therefore
3 strikes the offending language from the Protective Order. Should the Parties later seek to
4 designate other categories of information as confidential, they may move to amend the protective
5 order.

6 In summary, the Court GRANTS IN PART the Motion for Protective Order with the
7 exception of the language discussed above. The Court has reproduced the protective order, sans
8 the stricken language, below. IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d),
9 the production of any documents in this proceeding shall not, for the purposes of this proceeding
10 or any other federal or state proceeding, constitute a waiver by the producing party of any privilege
11 applicable to those documents, including the attorney-client privilege, attorney work-product
12 protection, or any other privilege or protection recognized by law.

13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated April 7, 2025.

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16 Marsha J. Pechman
17 United States Senior District Judge
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1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential, proprietary, or
 3 private information for which special protection may be warranted. Accordingly, the parties hereby
 4 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
 5 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
 6 protection on all disclosures or responses to discovery, the protection it affords from public
 7 disclosure and use extends only to the limited information or items that are entitled to confidential
 8 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
 confidential information under seal.

9 2. “CONFIDENTIAL” MATERIAL

10 “Confidential” material shall include the following documents and tangible things
 11 produced or otherwise exchanged: (a) Sensitive personal identifying information, including, but
 12 not limited to, the personal identifiers listed in LCR 5.2(a), individuals’ private employment
 13 records, and documents which are protected by the Health Insurance Portability and Accountability
 14 Act; (b) Non-public financial, accounting, commercial, proprietary data or applications, or other
 15 proprietary or trade secret information of the parties; (c) Non-public financial, accounting,
 16 commercial, proprietary data or applications, or other private or confidential information of any
 17 current or former customer or business partner of the parties; and (d) Information over which the
 designating party is obligated to maintain confidentiality by law, contract, or otherwise.

18 3. SCOPE

19 The protections conferred by this agreement cover not only confidential material (as
 20 defined above), but also (1) any information copied or extracted from confidential material; (2) all
 21 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
 conversations, or presentations by parties or their counsel that might reveal confidential material.

22 However, the protections conferred by this agreement do not cover information that is in
 23 the public domain or becomes part of the public domain through trial or otherwise.

24 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

1 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
2 produced by another party or by a non-party in connection with this case only for prosecuting,
3 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
4 categories of persons and under the conditions described in this agreement. Confidential material
5 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
6 that access is limited to the persons authorized under this agreement.

7 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
8 the court or permitted in writing by the designating party, a receiving party may disclose any
9 confidential material only to:

10 (a) the receiving party's counsel of record in this action, as well as employees of
11 counsel to whom it is reasonably necessary to disclose the information for this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of the
13 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
14 agree that a particular document or material produced is for Attorney's Eyes Only and is so
15 designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this
17 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
(Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
transcribed deposition testimony or exhibits to depositions that reveal confidential material must
be separately bound by the court reporter and may not be disclosed to anyone except as permitted

1 under this agreement;

2 (g) the author or recipient of a document containing the information or a custodian
3 or other person who otherwise possessed or knew the information.

4 4.3 Filing Confidential Material. Before filing confidential material or discussing or
5 referencing such material in court filings, the filing party shall confer with the designating party,
6 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
7 remove the confidential designation, whether the document can be redacted, or whether a motion
8 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
9 designating party must identify the basis for sealing the specific confidential information at issue,
10 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
11 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
12 the standards that will be applied when a party seeks permission from the court to file material
13 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
14 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
15 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
16 the strong presumption of public access to the Court's files.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
19 non-party that designates information or items for protection under this agreement must take care
20 to limit any such designation to specific material that qualifies under the appropriate standards.
21 The designating party must designate for protection only those parts of material, documents, items,
22 or oral or written communications that qualify, so that other portions of the material, documents,
23 items, or communications for which protection is not warranted are not swept unjustifiably within
24 the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are
shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
unnecessarily encumber or delay the case development process or to impose unnecessary expenses

1 and burdens on other parties) expose the designating party to sanctions.

2 If it comes to a designating party's attention that information or items that it designated for
3 protection do not qualify for protection, the designating party must promptly notify all other parties
4 that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
6 (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered,
7 disclosure or discovery material that qualifies for protection under this agreement must be clearly
8 so designated before or when the material is disclosed or produced.

9 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
10 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
11 the designating party must affix the word "CONFIDENTIAL" to each page that contains
12 confidential material. If only a portion or portions of the material on a page qualifies for protection,
13 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
14 markings in the margins).

15 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
16 any participating non-parties must identify on the record, during the deposition or other pretrial
17 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
18 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
19 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
20 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
21 at trial, the issue should be addressed during the pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent place on the
23 exterior of the container or containers in which the information or item is stored the word
24 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
designate qualified information or items does not, standing alone, waive the designating party's

1 right to secure protection under this agreement for such material. Upon timely correction of a
2 designation, the receiving party must make reasonable efforts to ensure that the material is treated
3 in accordance with the provisions of this agreement.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
11 confidential designations without court involvement. Any motion regarding confidential
12 designations or for a protective order must include a certification, in the motion or in a declaration
13 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
14 affected parties in an effort to resolve the dispute without court action. The certification must list
15 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
to-face meeting or a telephone conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
17 intervention, the designating party may file and serve a motion to retain confidentiality under Local
18 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
19 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
20 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
21 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
the material in question as confidential until the court rules on the challenge.

22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

24 If a party is served with a subpoena or a court order issued in other litigation that compels

disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving

1 party must return all confidential material to the producing party, including all copies, extracts and
 2 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
 6 product, even if such materials contain confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in effect until a
 8 designating party agrees otherwise in writing or a court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated this March 18, 2025.

10 s/ Matthew J. Bean

(via email authorization)

11 Matthew J. Bean, WSBA #23221

12 Jason W. Preston, WSBA #61451

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Attorneys for Defendant

U.S. BANK, N.A.

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of _____ **[insert formal name of the case and the number and initials
 assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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